

OFFICE OF THE ATTORNEY GENERAL



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MAY 31 1991

Honorable Fred O. Braswell, III
Director
Alabama Development Office
135 South Union Street, Suite 200
Montgomery, AL 36130

Telemarketing - Telephone and
Telegraph - Electronic
Surveillance

A telemarketing company which
desires to locate in Alabama
should consult with private
counsel to determine whether
any of that company's policies
might violate Alabama's
eavesdropping laws.

Dear Mr. Braswell:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTION

May a telemarketing firm conduct an
evaluation of its employees' business
telephone calls by monitoring the call
without notifying either the employee or the
customer?

FACTS AND ANALYSIS

Several well-known national and international firms
involved in telemarketing have shown an interest in placing
operations in Alabama. These firms do business by employing

persons to place telephone calls for marketing purposes to people across the United States. In order to evaluate performance and maintain an assured level of competence, the supervisors of the employees occasionally monitor actual phone calls between an employee and a client or customer.

Section 13A-11-30(1) defines eavesdropping as "to overhear, record, amplify or transmit any part of the private communications of others without the consent of at least one of the persons engaged in the communication. . . ." However, any violation of §§ 13A-11-31 through -39 would entail a criminal prosecution. This office, which is not a fact-finding entity, cannot determine whether hypothetical facts would result in a conviction for a crime. See our opinion to Honorable Roy W. Johnson, Jr., House of Representatives, dated December 16, 1988, AG No. 89-00088. We therefore advise you to inform any telemarketing company which desires to locate in Alabama that they should consult with a private attorney to determine whether any of that company's policies might violate Alabama's eavesdropping laws.

CONCLUSION

A telemarketing company which desires to locate in Alabama should consult with private counsel to determine whether any of that company's policies might violate Alabama's eavesdropping laws.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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